MANAGEMENT INFORMATION SERVICE

Report 135 Page 1065 Apr.- '55

INTERNATIONAL CITY MANAGERS' ASSOCIATION
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THE ADMINISTRATION OF MUNICIPAL CONTRACTS

What steps can the chief administrator take to ensure that municipal funds are safeguarded to the greatest possible extent when contracts are awarded? What are the pitfalls to be avoided in the administration of contracts?

A "public contract" is one to which a governmental agency is a party and which concerns all its citizens. More specifically, a municipal contract applies to any legally enforceable agreement between the municipality and individuals, firms, or corporations which calls for the delivery of and payment for commodities, services, or work of all descriptions.

A substantial part of the huge expenditures which cities make each year is for payment of contract obligations, and therefore it might be assumed that this element of public administration would have been carefully scrutinized long ago with adequate safeguards being taken to protect the interests of the public. Unfortunately, however, the administration of public contracts received little attention until recent years with the result that contracts represent the area in American government which has been responsible for more waste and corruption than any other one aspect of public life.

The types of contract abuses which have plagued American cities are well known and will not be reviewed here. Today there is much less deliberate corruption than in past years. Nonetheless it is true that many high level municipal officials still do not understand the pitfalls involved in the administration of contracts, and consequently the cities which they represent continue to suffer a financial loss because of inferior products and services being purchased on a contract basis, or exorbitant prices being paid because of poor administration.

Types of Contracts. Generally speaking, municipal contracts involving payments by municipalities fall into three principal categories:

1. The construction, alteration, and repair of public works.

2. Purchases of equipment, materials, and supplies.

3. Contracts for services.

Still another category of municipal contracts involves payment to rather than by the city and includes such things as sale, lease, easements, privileges, and concessions of or in public property. This category is as important as any other, but it includes only a small percentage of all contracts to which municipalities are a party. For that reason, this report will deal principally with the administration of public contracts involving payments by the city. Many of the principles to be enumerated, however, are common to all public contracts regardless of their nature.

Prohibition Against Interest of Officers and Employees

One general principle that stems from the common law but which is also generally given recognition in state constitutions and statutes and in city charters and ordinances is the prohibition against municipal officers or employees having a private financial interest, either direct or indirect, in public contracts which they award. Where contracts are awarded by officers or employees and a private financial interest is found to exist, such contracts will usually be declared invalid by the courts. The justification for declaring such contracts invalid is obvious, since the pecuniary interest of the officer or employee conflicts with his obligation as a servant or trustee of the public.

Adherence to this principle sometimes creates difficulties in smaller jurisdictions where the number of suppliers of goods and services is limited. Officials in small cities frequently complain that the best qualified men for public office are often those who own businesses from which the municipality must purchase some of its services or commodities, and that the public interest is adversely affected because these men cannot hold public office and continue to supply the needs of the city.

Several small cities have tried to solve this problem by adopting charter amendments to permit the purchase of goods or services from public officers provided the contract or order is approved unanimously by the council with the reasons for such action being spread on the minutes of the council. The recently published Model Purchasing Ordinance of the National Institute of Municipal Law Officers also makes provision for the council to waive compliance with the prohibition of interest by officers and employees "when it finds such action to be in the best interests of the city."

While it may be readily admitted that some jurisdictions suffer inconvenience and even incur higher costs because of these restrictions, history has proved that as a matter of general principle it is the public interest which is apt to suffer if city officials can exert influences on public business which will enhance their private interests. The opportunity and temptation for fraud and collusion is sufficiently great to justify reasonable inconvenience in preference to general or frequent waiving of the prohibition, and cities should be most cautious in seeking relief from such restrictions.

Equally apropos is the fact the public is disposed to view with suspicion any governmental transaction in which an officer or employee has a private interest. The council may be completely convinced that the best interests of the municipality would be served by entering into a contract which involves an officer or employee, but the reaction of the public is almost certain to be negative.

Competitive Bidding

Formal and Informal Contracts. The most important single manner in which the public interest may be safeguarded in the making of public contracts is by means of competitive bidding and award to the best bidder. Yet, the financial amounts which are involved in municipal contracts vary so widely that it is not practical to establish an iron-clad set of regulations with respect to competitive bidding on all such transactions, and cities generally attempt to resolve this difficulty by following an informal procedure on small contracts and a more elaborate and formal procedure on contracts involving substantial sums of money.

There is no uniformity among cities in fixing the value of a transaction which must be completed by formal, written contract. A few cities require such a procedure on all contracts, while at the other extreme some cities require formal action only

on contracts the value of which exceeds $5,000. Most cities, however, require formal contracts on purchases of goods or services which exceed $300, $500, or $1,000.

A formal contract procedure normally involves newspaper advertisements inviting bids, the receipt of sealed bids, public opening of the bids, the posting of bids for public inspection and execution of a written contract between the municipality and the successful bidder. Informal contracts, on the other hand, involve purchases of commodities in the open market without newspaper advertising and without the requirement of sealed bids or properly executed formal legal documents.

Where informal contracts are sought, the purchasing agent usually solicits bids from prospective vendors by telephone, by direct mail, and by public notice on the bulletin board at city hall. In such cases the purchasing agent should be required to obtain at least three competitive bids, if at all practicable, and to make the award to the lowest responsible bidder. To avoid misunderstandings, all bids received by telephone should be confirmed in writing in 24 hours. The purchasing agent should be required to maintain complete records of all informal contract purchases together with the bids submitted in competition thereon, and to keep them open to public inspection.

Many authorities have become increasingly critical of formal contract procedure in small contracts, and have urged that the dividing line between formal and informal contracts be moved ahead so as to achieve more flexibility. Russell Forbes in "Purchasing for Small Cities" recommends, for example, that the dividing line be established at $2,000, while the Model Purchasing Ordinance of the National Institute of Municipal Law Officers puts the dividing line at $5,000.

The prevalence of a dividing line such as $500 or lower is an outgrowth of the abuses which formerly surrounded the administration of contracts. With the spread of professionalization among city officials, coupled with the requirement that competition be required on all contracts except those awarded for emergency reasons and those involving very small sums of money, there is little to be gained in fixing a low dividing line between formal and informal contract procedures. This is especially true in view of the greatly diminished buying power of the dollar. Practically all the risk of favoritism on the part of purchasing agents is removed when competition and open records are required, and the flexibility obtained greatly facilitates the conduct of city business.

Inviting Bids. If true competition in bidding is to be assured, the first step is to make certain that all persons qualified to bid and desirous of bidding are given an adequate and equal opportunity to be informed that the city proposes to enter into a contract for certain purposes. Lower prices are dependent upon competition and competition will be keen only if there is widespread awareness of the city's needs among those who can supply them.

Although newspaper advertisements are normally required when bids on formal contracts are requested, experience seems amply to have demonstrated that such advertisements are a costly and unsatisfactory method of securing competition. Competition is best stimulated by direct requests for bids and the most effective device is the mailing of a request-for-quotation form to each prospective bidder. The sources of mailing addresses are the lists of qualified bidders if one is maintained, or the vendors' list which normally contains names and addresses of everyone in the trade area capable of supplying the needed service or commodity.

The invitation to bid should be carefully prepared to assure maximum public benefit and the closing date for bidding must give ample time for bidders to study the specifications and to make whatever financial or other arrangements that may be

necessary. With proper planning and programming, the city's needs can be known sufficiently in advance so that bidders can be given plenty of time.

Different types of formal contracts require different lengths of time for advertising. On construction contracts, for example, bidders must have sufficient time not only to study the specifications, but to make an on-the-site investigation as well. In such cases at least 30 days' notice is usually necessary. Other types of formal contracts do not normally require as much time and in many cases not more than 5 days' notice is necessary.

The invitation to bid on all types of contracts should give a clear and comprehensive description of the work, goods, or services desired. This is true even if more detailed specifications and plans must be examined before one can bid. Instructions to bidders, too, should be complete and clear. For example, bidders on formal contracts must know where copies of specifications can be obtained, to whom to send the bids, the address and other markings to be placed on the envelope so there will be no doubt that it contains a sealed bid, the deadline for receipt, and the hour, date, and place of bid openings. Many a savings has been lost and ill-feeling created because of carelessness in preparing the bid invitation.

The American Public Works Association (1313 E. 60th St., Chicago) and the Associated General Contractors of America, Inc., have collaborated in the preparation of a set of "Uniform Public Works Engineering Constructions Forms" (A.P.W.A. Standard Form A) which includes a suggested "Invitation for Bids" and "Instruction to Bidders." These are excellent guides for city officials and may be obtained from A.P.W.A. at 25 cents per copy.

Bid Deposits and Performance Bonds. All firms desiring to participate in the competitive bidding process are not necessarily qualified to do so. They may lack sufficient financial strength or suitable experience, while others may have acquired a questionable reputation for fair play. Still others may be submitting a bid for the first time, so that their record of performance is unknown.

Cities commonly guard against unfit bidders on formal contracts by requiring that quotations be accompanied by a certified check, cash, or bond as guarantee that the bidder will accept the order if it is awarded to him. This device is known as a bid deposit or "good faith" deposit, and usually ranges from 2 to 10 per cent of the total value of the contract. As soon as the best bidder is chosen, the bid deposits submitted by the unsuccessful bidders are returned to them.

A somewhat similar requirement is sometimes imposed upon the successful bidder in order to guarantee adherence to the terms of the contract. Under this method the successful bidder is required to deposit a bond for faithful performance usually equal to the amount of the contract, and the surety becomes liable for damages if the city must complete the contract by some means other than performance under the terms of the original contract.

Except in the case of construction contracts, purchases involving large sums of money, or purchases in which failure to perform would result in loss to the city, bid deposits and performance bonds are a needless and expensive safeguard. They complicate procedure, discourage competition, and since the cost of the surety is included in the bids they increase costs as well.

The same purpose can be served by giving the purchasing agent authority to declare vendors who fail to live up to their commitments to be "irresponsible bidders" and to disqualify them from receiving any business from the municipality for a stated period of time. The possibility of losing out on municipal business through placement

on the purchasing agent's "black list" is usually a sufficient deterrent to an otherwise wayward bidder. However, the law should give the purchasing agent authority to require bid deposits and performance bonds when he deems such action to be in the public interest. For example, new bidders or bidders with spotty records are "on probation" and should be required to submit a deposit with their bid.

Pre-qualification of Bidders. Some of the larger jurisdictions have largely solved the problem of assuring responsible performance by requiring all bidders to "pre-qualify." The pre-qualification process in effect requires all firms interested in doing business with the city to file well in advance of a bid opening complete financial statements, a statement of the firm's history and experience, references, significant biographical data about principals in the firm and any other data which the city may require. Bidders who wish to pre-qualify on construction projects should also be required to furnish information as to prior job commitments and to describe the equipment which will be used on the project.

The investigation of firms which attempt to pre-qualify and the maintenance of up-to-date records of such firms is a sizeable chore, and for that reason the pre-qualification of bidders is not widely used by smaller municipalities. In many cases, cities can obtain the same results without becoming involved in administrative complexities by using the pre-qualification lists established and maintained by the state government. In any event, however, cities should maintain a list of prospective bidders for each class of commodities or services for which competitive bidding is required. The maintenance of such a "vendors' list" will both simplify and expedite the purchasing procedure.

Specifications, Plans, and Estimates. It is basic in competitive bidding that all prospective bidders shall have equal access to, and information about, the nature of the proposed contract. In the case of simple construction contracts, contracts for the purchase of a limited classification of articles, contracts for easily defined services, or simple purchase and lease contracts, the bid advertisement may contain all of the necessary information. Where the contract is more complicated, however, separate plans and specifications may be necessary. Plans and specifications should provide all the information needed and they should be easily obtained in sufficient quantity to meet any reasonable demand.

The writing of specifications is an important and difficult work. The writer must be qualified technically in the subject matter and have an ability to write with clarity and consistency. Lack of consistency--making a statement at one point and repeating it in slightly modified form elsewhere in the specifications--often creates misunderstanding and unnecessary controversy. Vague, indefinite and ambiguous terms should be avoided. If the choice is between giving too much or too little information, it is better to err on the side of too much, if it contributes to a better understanding of the specifications.

Purchasing officials are frequently badgered about specifications. Suppliers sometimes resist specifications and urge that what the city needs is something else (which the supplier handles). Employees press for favorite items and express their whims and prejudices. The recommendations of employees are frequently sound, but the purchasing official who accepts them without question may do so at public expense, though he may "keep peace in the family" thereby.

Although the purchasing agent should assume the initiative in the standardization of commodities, he should not have sole responsibility for this work. The preparation and adoption of satisfactory specifications for materials, supplies and equipment should be a cooperative enterprise among the chief executive, representatives of the using agencies, the purchasing agent, and such city technicians as chemists

or engineers. In the larger cities, a permanent formal standardization committee consisting of such officials is desirable. Care must be taken, however, to adopt those standards of quality and performance which will best suit the needs of the users.

In any event, the preparation of specifications, other than standard specifications obtained from such organizations as the National Institute of Governmental Purchasing or from other governments, should be the sole responsibility of persons employed by the city. Permitting suppliers to prepare specifications is to invite exclusion of other suppliers, and should never be permitted.

Construction specifications should be prepared by city engineers or by consulting engineers or architects. Such specifications should give the specific location and a detailed and accurate picture of the work to be done, and should cover such items as scope of work, time of completion, method of payment, terms of acceptance, claims for extra costs, changes in work, extent of inspection services, conditions under which the time limits will be extended and so on.

The importance of properly prepared and well-enforced specifications cannot be over-emphasized, because in the final analysis they will determine the quality both of construction projects and of goods and services. Loosely drawn specifications can easily result in the city receiving inferior goods, performance, or services, with no legal way to require a better standard of performance or a higher quality of product.

Preparation of Estimates by the City. The city cannot know whether it is in the public interest to award any contract unless it has a yard-stick by which to judge the reasonableness of bids. Therefore the city should always prepare estimates, if only informally. The purchasing agent will know with considerable accuracy what prices ought to be paid for materials and supplies while estimates prepared by engineering personnel on public works projects will serve as a yard-stick for deciding whether to reject bids and re-advertise, to defer the project, or to proceed by force account.

Late Bids. A needless and bothersome controversy sometimes arises over what is a "late" bid. If the invitation to submit a written bid stipulates clearly the place and the final day and hour for receipt of bids, there should be no question as to when a bid fails to qualify. Any bid received after the deadline should be rejected.

Award to Successful Bidder

The process of advertising and of obtaining competitive bids may have been fully complied with and yet the protection of the public interest be thwarted by awarding the contract to a firm which did not submit the best bid. The fact that the awarding authority often has wide discretion in determining what is the "best" bid gives opportunity for abuse of that discretion. Numerous legislative enactments have attempted to reach a reasonable middle ground between complete freedom of the awarding authority to select any bid of its choice and unduly restricting its choice to a bid that is mathematically best but unsound for other reasons.

Selecting the Best Bid. Requirements with reference to the award of contracts appear in state laws and in municipal charters and ordinances. Some localities specify that awards shall be made to the "lowest bidder," but this provision is fraught with danger and should be abandoned. Most cities specify that awards must be made to the "lowest responsible bidder" or to the "lowest and best bidder." A few require that the award be made on the basis of the bid "most advantageous to the city."

Whatever the terminology, the selection of the bidder to whom the award will be made is often the most difficult aspect of contract administration. Many city officials can cite examples of instances where a low bid was received from a responsible firm, and yet the "lowest responsible bid" was not the best bid. For this reason, many authorities argue that the proper terminology is "lowest and best bid" or even the "most advantageous bid."

These arguments notwithstanding, the Model Ordinance of the National Institute of Municipal Law Officers provides that contracts shall be awarded to the "lowest responsible bidder." The ordinance then provides that in making this determination, the following standards must be considered in addition to price:

> "The ability, capacity and skill of the bidder to perform the contract or provide the service required;
>
> "Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
>
> "The character, integrity, reputation, judgment, experience and efficiency of the bidder;
>
> "The quality of performance of previous contracts or services;
>
> "The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
>
> "The sufficiency of the final resources and ability of the bidder to perform the contract or provide the service;
>
> "The quality, availability and adaptability of the supplies, or contractual services to the particular use required;
>
> "The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
>
> "The number and scope of conditions attached to the bid."

In determining the vendor to whom the contract is to be awarded, the purchasing agent will find it necessary on many occasions to consult with officials of the using departments before making a final decision. Where a contract is for a construction project, the director of public works will sometimes encounter the same difficulty in ascertaining what is actually the best bid. In all such cases, the final determination involves the exercise of judgment and discretion and must be based on a thorough investigation of all available facts.

Highest Responsible Bidder. A small percentage of municipal contracts involve payment to rather than by the city, and in such cases the award should be made to the "highest responsible bidder" or to the "highest and best bidder." Contracts of this type are usually for the sale or lease of public property or for concessions of various kinds. Where such contracts call for a certain standard of service to be provided by the successful bidder--as in the case of a concessionaire--the same general principles as set forth by the National Institute of Municipal Law Officers for "lowest responsible bidder" apply equally as well.

Rejection of Bids. The awarding authority should reserve the right to reject any and all bids when such action is in the public interest. The purpose of such a provision is to protect the public against the acceptance of a bid which, though the

lowest, may not be the lowest responsible bid or for some other reason is not the best obtainable bid. Furthermore, if the city suspects collusion, even though such collusion cannot be proved, it should have the power to reject all bids. Going still further, only a single bid may be received and city officials may feel that the bid should be rejected and the entire procedure started afresh.

The law should specify that where the low bid is not considered to be the best bid, the awarding authority must state in writing the precise reasons for not accepting the low bid and must file such statement with the other public papers relating to the transaction.

Tie Bids. If two or more of the lowest responsible bids are equal in amount, quality, and service, and if one of the tie bids was submitted by a local bidder, the law should provide that the award be made to the local bidder. Where tie bids are submitted by two or more local bidders or by two or more nonlocal bidders, the award may be made by drawing lots in public. Of course, if it is suspected that the tie bids were submitted as a result of collusion, the city should reject all bids and readvertise if it appears that the best interests of the city will be served by such action.

Role of Council in Awarding Contracts. In past years, city councils traditionally approved the awarding of all contracts which called for payment of more than an arbitrarily fixed sum of money. The trend, however, is to place more authority with administrative officials. In Des Moines, for example, the purchasing agent is empowered to award contracts, after competitive bidding, to the lowest responsible bidder (or highest, as the case may be) when the sum involved is $1,500 or less. All contracts in excess of $1,500 must be signed or approved by the city manager. The city manager may submit, "in his discretion," contracts to the city council for approval and execution.

In Kansas City, Mo., the city council approves contracts when the amount of consideration exceeds $20,000 except term supply and equipment contracts. All contracts involving less than $20,000 need not be submitted for council approval except (1) lease agreements; (2) contracts for which no appropriations have been made; and (3) contracts to be awarded to other than the low bidder when the consideration exceeds $2,500. In University City, Mo., the council approves all contracts which exceed $1,000, while in Palo Alto, Calif., council approval is required on all contracts exceeding $5,000.

As reported in the 1951 Municipal Year Book, however, the most common dividing line is $500. Fifty-three per cent of all cities over 25,000 which reported on their purchasing procedures indicated that council approval was required on contracts totaling $500 or more; 20 per cent reported a ceiling of $1,000; and 19 per cent indicated that there was no limit on the amount that could be purchased without special council authorization provided the items to be purchased had been approved in the annual budget.

NIMLO's Model Purchasing Ordinance carries this latter idea forward by placing full responsibility on the purchasing agent for the awarding of all contracts administered by his department regardless of the amount of money involved. It is pointed out in this document, however, that opinions on the role of the council in awarding contracts vary widely, and that some authorities believe that legislative approval should be required for contracts over a given sum. In all cases where council approval is necessary, action should be taken only upon receipt of a recommendation from the city manager.

Execution of Contracts. One of the distinguishing characteristics of a formal contract is the requirement that it be in writing, and that it be signed both by the successful bidder and the proper municipal officials. Some laws require the mayor and the city clerk to execute the contract on behalf of the city, but modern methods are best served by having such documents signed by the purchasing agent or the director of public works depending upon the nature of the contract, the city attorney, the finance director, and the city manager. The purchasing agent or the director of public works signs as recommending approval; the attorney signs to indicate the legality of the award; the chief finance officer signs to give assurance of the availability of funds to meet the expenditure; and the manager signs as the awarding official. Where a purchase contract is for a small sum, the contract does not normally clear through the city manager or the attorney, but is signed by the purchasing agent as the awarding authority after certification by the finance officer that funds for payment are available in the annual budget.

Legitimate Exceptions to Competitive Bidding

There are several legitimate exceptions to the general requirement that municipal contracts shall be awarded only after competitive bidding. These are (1) contracts where no competition is possible, (2) personal service contracts, (3) emergencies, (4) contracts where only one bid is received, and (5) purchases involving very small sums of money.

Contracts Where No Competition is Possible. Examples of this type of contract are those for public utility services where only one company can furnish the service, those involving the purchase by the city of a specific piece of land, or those where the desired article is supplied only by one company. Competitive bidding is obviously impossible in such cases.

Personal Service Contracts. Such contracts involve the employment of consulting engineers, auditors, and other classes of professional people for the rendering of high level technical services to the municipality. Actually, the exclusion of members of professions from competitive bidding often results more from a traditional stand by the professional groups not to compete for employment than from an exercise of valid reason. Yet, it is admittedly difficult to specify the duties to be performed under many such contracts and the courts have added the final touch by universally exempting personal service contracts from the requirements of competitive bidding. (For further discussion see MIS Report No. 88 "When and How to Use Outside Consultants." May, 1951).

Emergencies. Since the process of preparing specifications, publishing invitations to bid, receiving and examining bids, and awarding contracts involves an appreciable amount of time, it is possible that on rare occasions the delay encountered would be more harmful to the public than the letting of contracts without requiring competitive bidding. Whenever emergencies arise which require immediate action, cities may normally set aside the competitive process and award an "emergency" contract.

The danger, of course, is that alleged emergencies may be used as a subterfuge to avoid the requirements of competitive bidding. Lack of planning, pressure to get work done, a desire to eliminate the "red tape" of competitive bidding--all may contribute to more "emergencies" than can legitimately be justified.

The best way to minimize such abuses is to require each requisition for an emergency purchase to be accompanied by a detailed written explanation. If the emergency is such that a telephone order is made, a confirming price should be received from the vendor and a confirming order sent to him as soon as possible.

Except in the most extreme emergencies no order should be directly made by a department head without obtaining approval from the city manager and the purchasing agent. Whenever emergency contracts are made which are of such a size that they would normally require formal contract procedure, the law should require that a full explanation be filed with the awarding authority and that it be available to public inspection.

Contracts Where Only One Bid is Received. In such cases the bidding is clearly noncompetitive in nature, and the city may either accept the single bid or readvertise for new bids. However, the courts have held that the competitive nature of the bidding is not destroyed when only one bid is received and that the bid can be accepted unless state or local laws expressly forbid such a practice.

Purchases Involving Small Sums of Money. Theoretically, an attempt should be made to secure competition regardless of the amount of money involved. Practically, however, if the amount involved is very small, the potential benefits to be derived from competitive bidding might not justify the trouble and expense which are a part of the competitive bidding process. This dilemma can be partially resolved by the establishment of a petty cash fund which permits the purchase of items costing no more than $5 or $10 without resorting to a solicitation of competitive bids. Some cities have found it necessary to allow complete freedom from competitive bidding restrictions on purchases ranging up to $25 or $50. In University City, Mo., for example, an order of less than $50 for any materials, services, or supplies can be placed directly with the firm which has been found able to deliver at the lowest cost commensurate with quality.

The problem of numerous purchases of small items without competition can be largely overcome by a special type of contract known as the "price agreement." Under this method the vendor who has submitted the lowest responsible bid obligates himself to supply all requirements of the municipality for a specified commodity during a stated period. The municipality does not obligate itself to purchase or to accept delivery of any definite quantity of the commodity, but simply furnishes the vendor with an estimate of its probable needs as a guide to the amount that may be purchased.

Circumventing Competitive Bidding

Cost-Plus Contracts. The value of competitive bidding on construction contracts can be materially invalidated by permitting large amounts of extra work to be done on a cost plus, percentage, or fixed-fee basis. This may result from an indecision on the part of the governing body as to the ultimate scope of the project, or incomplete planning of the work by the engineer or architect. In instances of collusion a favored bidder can be advised that work will exceed the amount advertised. He then can be awarded the contract as low bidder, knowing he will profit on the extra work. To obviate such practices, there should be a prohibition against the total project cost exceeding the contract price more than a fixed amount, say 15 or 20 per cent, with the additional stipulation that extra work will be performed in accordance with unit prices included in the contract.

Unbalanced Bids. A similar, but less easily detected, device for favoring a particular bidder is the accepting of unit price bids with certain unit prices excessively low and others excessively high. These unbalanced bids may result from failure of the plans and specifications to show accurately the estimated quantities of materials needed for the project. When this occurs as a result of collusion, the favored bidder prepares his own quantity estimates, bidding high on those items which will exceed the city's estimates and low on those which will actually occur in less volume. However, unbalanced bids are sometimes submitted not because of collusion but simply because the specifications were unintentionally inaccurate. It

is good practice, therefore, to check the city engineer's estimates against final quantities in order to determine the reason for any such discrepancies.

Preference to Local Vendors. There are not a few local vendors who allege that simply by virtue of their being local taxpayers they are entitled to a share of the public business. The question of granting preference to local vendors is a delicate one involving important financial and public relations considerations, and it is easy for public officials, particularly elected officials, to be swayed by the illogical appeals of those who would benefit at the expense of the majority of taxpayers.

The principle to which conscientious public officials must adhere is that it is their primary responsibility to provide the best work or supplies for the citizens of their city at the lowest possible cost. This is impossible if preference is given to any vendor, except when price, quality, and service are equal to what can be had from nonpreference vendors.

In at least two cities where a careful analysis was made of kinds of items purchased by the city and the kinds of goods and services supplied by local vendors to the buying public, it was found that less than 20 per cent of the vendors in those cities sold the kinds of goods and services which the city bought. For example, the city bought no ladies wearing apparel, no shoes, almost no groceries, no farm supplies, etc. Yet each business selling these items paid taxes to the city.

It is clearly unfair to use the taxes of 80 per cent of the business taxpayers --or in fact any segment of local taxpayers--to subsidize the remainder who are unable or unwilling to compete in the open market for city business.

Uniform Bids; Rotation of Business; "Split" Contracts. Occasionally, bidders will agree among themselves to submit uniform bids, or to rotate the city's business among themselves annually by deciding in advance which firm will submit the best bid for each particular year. Fortunately, the unwritten laws of competition serve to prevent any large-scale use of these methods of collusion and the alert purchasing agent can usually thwart such practices altogether by aggressively soliciting bids from all suppliers in the trade area.

Still another device which has been used is that of "splitting" contracts. The requirements of competitive bidding are evaded in such cases by breaking a contract down into component parts, each of which involves an amount less than that set as a minimum below which awards may be made without regard to competitive bidding. This type of collusion can be practiced only with the connivance of the city official who awards contracts, and is the result of a badly written law which does not require competitive bidding on informal, as well as formal, contracts.

Preventing Acts to Circumvent Competitive Bidding. Although violation of competitive bidding can have serious consequences for the public as a whole, it is not always a simple matter to invoke remedies for such violations. For one thing, it is difficult to prove fraud or collusion on the part of bidders. If public officials are involved, the officials most likely to have knowledge of the malpractice are also likely to be participants and obviously not inclined to act. The private citizen who may be interested or adversely affected often feels that the damage he personally suffered does not equal the cost of bringing legal action.

The law should set forth clearly what kinds of acts are prohibited and the penalties therefor, and bidders should be required to certify on each contract that they have no knowledge of any violation, and that there has been no fraud or collusion on their part. Such a safeguard will serve as a deterrent if not a preventive to

to wrong-doing. If collusion is found to exist the contract can be voided and the firms involved removed from the list of responsible bidders. If city officials are found to be involved they should, of course, be summarily dismissed.

Assuring Performance In The Public Interest

All the safeguards thus far mentioned can come to naught if there is not conscientious, competent, and complete enforcement of the contract. Bidders who default on their quotations should be declared "irresponsible" and should be disqualified from receiving any business from the municipality for a stated period of time. Furthermore, a successful bidder should forfeit any surety which may have been required if he fails to enter into a contract within a reasonable period, probably 10 days, after the award has been made.

Enforcement. Adequate enforcement procedures must be designed to fit the nature of each type of contract. Construction contracts, in which specifications can be made so detailed that every step can be checked against such specifications, present the simplest supervision problem, provided competent inspectors are employed. It is quite common and proper to require that payment for any part of the work shall be made only on certification of the inspecting officer that work and materials of the specified character have actually been put into the construction.

As a further safeguard, construction contracts may provide that not more than 80 per cent of the total contract price shall be paid until after final inspection and acceptance. If the contractor fails to complete the work or does not perform in accordance with the contract, the city should immediately notify the agency which furnished the contractor's performance bond so that any damages which may have been suffered can be collected and so that steps can be taken to complete the work as soon as possible. If the contractor completes the work satisfactorily, the city normally retains the performance bond for one or two years, and occasionally the contractor is even required to post a separate bond to protect the city for a fairly long period to guard against faults that are not immediately discoverable.

Contracts for materials and supplies require a somewhat different kind of enforcement. Place and time of delivery may be important to facilitate inspection when goods are received. Inspection should include both counting the number of items received for comparison with invoices and checking for compliance with specifications as to quality. It may be desirable in some cases to make laboratory tests of samples of goods received.

A useable and simple device for assuring delivery of the proper quantity is to delete the quantity ordered from the purchase order copy which goes to the receiving department. This makes it necessary for the receiving department to count or measure the goods received and to record their findings on the receipt-of-goods form. The purchasing office can then compare the amount received with the amount ordered or billed by the vendor.

It is difficult to enforce performance of a personal service contract, but the public agency is not entirely without controls. While tradition and professional codes may prevent competitive bidding, they do not prevent the city from preparing specifications to which there must be adherence by the contracting party. Specifications can stipulate hours and place of work, qualifications of personnel, and can require progress reports at stated intervals. Although it is hardly practical to dictate how work shall be done, or to judge the quality of professional performance in measurable terms, it is possible to stipulate what is to be done and in what time period. These are matters of fact and can be enforced.

The City's Responsibility. As noted throughout this report, public contracts are cooperative ventures and successful performance can be assured only when the city joins with the contractor in striving for a high level of accomplishment. The obligations of the city to be clear and concise in requesting bids and to be motivated only by the desire to obtain the best service at the lowest cost have already been enumerated. These goals can be accomplished by any city which makes an earnest attempt to achieve them.

Perhaps the greatest deterrent to good contract procedures is the widespread existence of antiquated laws, and cities which want to improve the administration of contracts should subject their present legislation to critical scrutiny. Examples of good contract procedures and model ordinances may be obtained from MIS on a loan basis.

Conclusion

Protection of the public interest in the administration of municipal contracts places on city officials a responsibility and trust of major importance. At virtually every step in contracting for work or goods there is opportunity for wrong doing, and specific safeguards must be enacted to guard against favoritism, extravagance, and fraud.

The experience of many cities over a long period of time have contributed to a body of knowledge as to what can be done to give the public reasonable protection against the improper administration of contracts. What will be done rests with elected and appointed officials, and with an alert and interested citizenry.

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Note: The administration of municipal contracts is a large and complex subject and in a brief report of this nature it is impossible to describe all of the elements involved or the great variety of actual practices. Neither is it possible to analyze each type of contract. No mention has been made, for example, of contracts involving bond sales, or of contracts for special services such as insurance. (Insurance has been treated in MIS Reports 33 and 74). This report is necessarily limited, therefore, to a general description of contract administration and to the broad principles which are common thereto.

Grateful acknowledgement is made to persons who reviewed a tentative draft of this report and made many useful suggestions: W. B. Avery, city manager, Manhattan, Kansas; Robert D. Bugher, assistant director, American Public Works Association; Mark Keane, village manager, Oak Park, Illinois; John C. Kreig, purchasing agent, Cincinnati, Ohio; and Robert D. Morrison, city manager, Lynchburg, Virginia.